

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications)	
Capability to All Americans in a)	CC Docket 98-146
Reasonable and Timely Fashion, and)	
Possible Steps to Accelerate Such)	
Deployment Pursuant to Section 706)	
of the Telecommunications Act of 1996)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's (FCC) Third Notice of Inquiry (NOI) in the above-captioned proceeding.¹ OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

¹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section*

In addition to serving as incumbent local exchange carriers (ILECs), OPASTCO members provide a wide variety of telecommunications services in sparsely populated, high-cost communities. Over 90 percent supply dial-up Internet access. Nearly 60 percent provide broadband services, using a variety of delivery methods, and many who do not yet offer broadband hope to do so within the next few years. Also, nearly one-third operate competitive carriers, some of which provide data services.

II. Small, rural ILECs are deploying advanced services in a reasonable and timely manner to the extent that market forces, technological limitations, and regulations allow

As OPASTCO has stated previously in this proceeding, rural ILECs are deploying advanced services when the combined factors of market forces, technological limitations, and regulations make it viable to do so.² In addition to the challenges faced by large companies seeking to provide advanced services, rural ILECs must also overcome unique hurdles such as lack of economies of scale, low population densities, difficult terrain, and other adverse conditions.³ However, rural ILECs are dedicated to serving their communities' needs in spite of these adversities.

The NOI provides figures which, by themselves, demonstrate that deployment of high-speed and advanced services in sparsely populated areas is occurring in a reasonable and timely manner. Zip codes in "small towns" with at least one subscriber to high-speed services grew

706 of the Telecommunications Act of 1996, Third Notice of Inquiry, CC Docket No. 98-146, FCC 01-223 (rel. Aug. 10, 2001) (NOI).

² OPASTCO comments in CC Docket No. 98-146 (fil. Sept. 14, 1998 (First NOI) and March 20, 2000 (Second NOI)).

³ See, Rural Task Force White Paper #2: *The Rural Difference*, available at <http://www.wutc.wa.gov/rtf>. The same factors which make the provision of basic voice telephone service more difficult and expensive in rural areas have similar effects on the deployment of advanced services.

from 57 percent as of December 31, 1999, to 79 percent one year later.⁴ Locations that include tribal lands are among the most rural in the nation. Even here, the number of such places with customers subscribing to high-speed services increased from 44 percent to 67 percent during the same time period.⁵ Furthermore, the data found in the statistical summary⁶ released simultaneously with the NOI shows that the number of areas with the lowest population densities that have high-speed subscribers have nearly doubled in the past year. The percentage of zip codes in the least dense areas with at least one high-speed subscriber jumped from 18.7 percent in 1999 to 37.2 percent in 2000, while in the second and third least densely populated locations, the increases were 23.9 percent to 44.5 percent and 27.9 percent to 54.3 percent, respectively.⁷

Encouraging as these figures are, it is important to note that the progress made in rural areas is actually greater than the Commission's figures are able to reflect. This is due to the Commission's wholly appropriate concerns that it must avoid burdening small providers with additional reporting requirements.⁸ Considering that many small providers of advanced and high-speed services in rural areas are fortunately not subject to the heavy reporting requirements of Form 477, there is no doubt that the true level of deployment in these areas is higher than portrayed.

⁴ NOI, para. 15.

⁵ *Ibid.*

⁶ *High-Speed Services for Internet Access: Subscribership as of December 31, 2000* (Ind. Anal. Div. rel. Aug. 10, 2001) (December 2000 Statistical Summary).

⁷ *Id.*, Table 10 (High-Speed Subscribership Ranked by Population Density).

⁸ NOI, para. 10. In fact, the current reporting requirements are already overly burdensome and often detract from the ability of small rural companies to deploy advanced services in rural areas; *see* OPASTCO comments in *Local Competition and Broadband Reporting*, CC Docket 99-301, FCC 01-19 (fil. March 19, 2001), pp. 3, 5-7. OPASTCO encourages its members to fill out Form 477 on a voluntary basis if their

III. The most immediate action the Commission can take to accelerate deployment of advanced services in areas served by rural carriers is to freeze the authorized rate of return at 11.25 percent and close CC Docket No. 98-166 without further delay

The NOI seeks comment on actions that can be taken to accelerate deployment of advanced services, including “regulatory methods that remove barriers to infrastructure investment.”⁹ To accelerate deployment of advanced services in rural areas served by small carriers, the Commission should immediately remove the regulatory uncertainty concerning the authorized rate of return for non-price cap carriers that has needlessly hindered these companies for three years.¹⁰ The Commission should correct this situation by freezing the rate of return at its current level of 11.25 percent and closing the docket without further delay.

In expert testimony provided in the Petition for Rulemaking of the LEC Multi-Association Group (MAG), Dr. James Vander Weide explained the importance of maintaining the current rate of return:

Investments in telecommunications facilities are long-term investments that cannot be reversed. The non-price cap LECs will be more likely to invest in new telecommunications facilities if they can be reasonably assured that they will have an opportunity to earn an adequate return on their investment over the life of the facilities. By continuing the current 11.25 percent authorized rate of return, the Commission can reduce the uncertainty about the prospective returns the non-price cap LECs are likely to achieve on investments in new telecommunications technologies and services. Thus, the non-price cap LECs will be more likely to invest in new telecommunications technologies and services if the Commission affirms the current 11.25 percent allowed rate of return on investment.¹¹

individual circumstances allow them to do so without detracting from their level of customer service.

⁹ *Id.*, para. 25-26 (citing Section 706 of the Telecommunications Act of 1996 (1996 Act)).

¹⁰ *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, FCC 98-222 (rel. Oct. 5, 1998) (CC Docket No. 98-166).

¹¹ Petition for Rulemaking of the LEC Multi-Association Group, *Improved Regulation of Interstate Services*

As the Commission encourages rural ILECs to invest in broadband-capable infrastructure on the one hand, it keeps the specter of an insufficient rate of return looming over their heads with the other. Keeping this docket open is antithetical to Sec. 706 of the 1996 Act. It retains, rather than removes, barriers to the deployment of advanced services in rural areas while providing absolutely no countervailing consumer benefit. By maintaining the rate of return at 11.25 percent and closing this docket with dispatch, the Commission will serve the public interest.¹²

IV. The Commission should take additional deregulatory actions to accelerate the deployment of advanced services in areas served by rural carriers

a. The Commission should adhere to Section 309(j)

In Sec. 309(j) of the Communications Act of 1934, as amended, Congress specifically directed that in order to promote competition and the public interest, rural telephone companies should be among those ensured of access to spectrum licenses so that they may bring services to rural consumers without administrative delays.¹³ Yet for some time, OPASTCO and other rural advocates have expressed concern regarding the implementation of Sec 309(j).¹⁴ Too

of Non-Price Cap Incumbent Local Exchange Carriers And Interexchange Carriers, CC Docket No. 00-256, Exhibit 2: Affidavit of James H. Vander Weide (fil. Oct. 20, 2000) (MAG plan), p. 21.

¹² Freezing the rate of return at 11.25 percent is one component of the MAG plan. Adoption of the MAG plan as proposed would also go a long way to eliminating regulatory uncertainty. However, that plan involves the complicated issue of access charge reform, and is properly being considered under its own proceeding. Closing CC Docket No. 98-166 prior to the resolution of other issues addressed in the MAG plan would not impact the continued deliberations regarding access charge reform.

¹³ 47 U.S.C. 309(j)(3)(A-B).

¹⁴ See, OPASTCO joint comments in *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT 00-230 (fil. Feb. 9, 2001). See also, comments filed in *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket 97-82, specifically: Joint Ex Parte Letter of the Rural Telecommunications Group (RTG), National Telephone Cooperative Association, OPASTCO, and the U.S. Small Business Administration's Office of Advocacy to Chairman William Kennard (fil. Nov. 13, 2000); Joint RTG/OPASTCO Petition for Reconsideration (fil. Oct. 5, 2000); RTG/OPASTCO Reply Comments (fil. June 2000); OPASTCO Comments (fil. September 24, 2001).

often, spectrum license rules do not give adequate regard to Congress's directive regarding rural telephone companies. These lapses have had the effect of limiting the scope of services available to consumers in some rural areas, contrary to Sec. 309(j).

The trend towards ever-larger areas for spectrum licenses, without effective provisions for rural carriers to access the smaller geographic areas where they currently offer service, thwarts the clear intent of 309(j). Even if provided with generous bidding credits, small carriers cannot hope to compete against large companies for licenses which span vast tracks of the nation. Large companies are rarely, if ever, interested in serving sparsely populated markets, resulting in a lack of service for rural Americans. Small license areas, or rules which otherwise assure rural carriers access to spectrum suitable for deployment of advanced services, would be in keeping with both Sec. 309(j) and Sec. 706 of the Act.¹⁵

b. The Commission should permit accelerated depreciation for broadband infrastructure investments

An accelerated depreciation schedule for broadband network upgrades is necessary to account for the fast obsolescence of high-tech equipment brought about by constant technological breakthroughs. Depreciation according to "Internet time" would provide small carriers with greater confidence that they will be able to recover their capital investments. It would also actively encourage plant upgrades, which lead to increased service quality.

29, 2000); RTG/OPASTCO Comments (fil. June 22, 2000).

¹⁵ We note that smaller license areas can be coupled with combinatorial bidding rules to permit companies to effectively obtain regional licenses. This approach would allow large bidders to focus their bids on the

V. Conclusion

Small, rural LECs continue to deploy advanced services in high-cost, difficult to serve rural areas. In so doing, they overcome unique challenges presented by market forces, technological limitations, and regulatory impediments. While the Commission cannot control the first two factors, it can take specific actions described above that will remove barriers to investments. These actions include: immediately freezing the authorized rate of return at 11.25 percent and closing CC Docket No. 98-166; adhering to Sec. 309(j); and permitting more accurate depreciation of equipment.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION AND
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specific, higher-density areas in which they prefer to offer service. This would prevent rural locations from being closed off to the small carriers that desire to deploy in sparsely populated areas.

Certificate of Service

I, Tiffani N. Belk, hereby certify that copies of OPASTCO's comments were sent on this, the 24th day of September, 2001 by first class United States mail, postage prepaid, to those listed on the attached sheet.

/s/ Tiffani N. Belk

Tiffani N. Belk

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